This document has been electronically entered in the records of the United States Bankruptcy Court for the Southern District of Ohio.

IT IS SO ORDERED.

Dated: May 23, 2013

Beth A. Buchanan
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

IN RE: GREGORY CECIL VANOVER CINDY DEE VANOVER	:	CASE NO. 11-13349 JUDGE BETH A. BUCHANAN
DEBTOR(S)	:	(CHAPTER 13)
....		
MARGARET A. BURKS, TRUSTEE	:	ADVERSARY NO. 13-1010
Plaintiff -VS-	:	
GREEN TREE SERVICING LLC	:	
Defendant	:	**AGREED JUDGMENT ENTRY**

This matter is before the Court upon the adversary action filed by Margaret A. Burks, standing Chapter 13 Trustee, (hereinafter "Plaintiff") seeking a determination that the mortgage lien last assigned to Green Tree Servicing LLC (hereinafter "Defendant") was not properly perfected pre-petition and may not be enforced as against the bankruptcy estate. The parties to said adversary agree to an entry of judgment as follows:

1. On or about December 21, 2007, Debtors Gregory and Cindy Vanover entered into a loan contract with Countrywide Bank, FSB and Mortgage Electronic Registration Systems, Inc. to borrow $135,850.00 to be secured by a mortgage in debtor's real property commonly described as: 5100 Fairfield Ave., Fairfield, Ohio 45014-2706. The mortgage securing this obligation was recorded January 10, 2008 at Book 7977, page 569 of the mortgage records of Butler County, Ohio.

2. Countrywide Bank, FSB and Mortgage Electronic Registration Systems, Inc. transferred the right to the collect the obligation to the Defendant by an instrument recorded August 6, 2012 at Book 8474, page 2174 in the Butler County records, and by an assignment of claim in the above-captioned lead case as Document 41 on September 17, 2011. The lien securing the payment of the claim has not, however, properly perfected because the notary clause affixed to the mortgage fails to identify the party or parties providing acknowledgement to the Notary Public. The copy of the mortgage attached to Defendant's Proof of Claim No. 1 exhibits this omission. This omission renders the mortgage defective under Ohio statute, as the execution does not comply with Ohio Rev. Code Sec. 1301.01, Sec. 147.51 and Sec. 147.55(A).

3. Defendant's lien has not been perfected and is not enforceable against the Trustee. To the extent that the unrecorded mortgage could be perfected or could otherwise be asserted against the real property, it would be subject to avoidance pursuant to 11 U.S.C. § 764 and would be deemed a preference as defined by 11 U.S.C. § 547(b)(4)(A). The transfer in the form of an unperfected lien is also avoidable under 11 U.S.C. § 544.

4. The parties agree that Defendant's mortgage is hereby avoided and the lien is preserved for the benefit of the bankruptcy estate.

5. The parties agree that Defendant is declared an unsecured creditor. Trustee shall schedule Defendant's total Claim 1 as a general unsecured claim to be paid 76%, notwithstanding the fact that the claim has been filed as a secured claim.

6. Should the Debtor complete her plan, including payment of a dividend of 76% to Defendant, then Defendant's claim shall be also be discharged. Defendant and its successors and assigns shall be enjoined from attempting to perfect the lien pursuant to any pre-petition security agreement granted to it by Debtor.

7. Should the Bankruptcy case be dismissed without a discharge of the unsecured claim of Defendant, the rights of the parties shall be restored as they existed prior to the date of the filing of the Bankruptcy petition. This includes the right of Defendant to seek to enforce its security agreement, including, but not limited to, perfection of its lien.

8. This Agreed Judgment shall bind the parties and their successors and assigns. Upon conversion of this case to another Chapter of the Bankruptcy Code prior to the Discharge of Defendant's unsecured claim (including, but not limited to conversion to Chapter 7), then this judgment shall be preserved for the rights and interests of any successor Chapter Trustee and will be enforceable by the successor Trustee in favor of the Chapter 7 estate as a finding that the real property is free and clear of any lien of Defendant.

IT IS SO AGREED AND ORDERED

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